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LEGAL ETHICS.

An address delivered to the Students of the Department of Law of the University of Pennsylvania.*

The science of the law consists in the application to the infinite complexities of human affairs of certain rules which society has expressly or impliedly adopted for the guidance of its individual members. The lawyer is a professional expert in this science. He is called upon to advise as to the conduct of individuals in view of these rules or to defend or enforce before human tribunals the rights of individuals or of the State when a dispute arises as to the application of these rules to any particular occurrence. His professional work, therefore, consists in the exercise of his own intellectual powers in influencing the minds of other men. Whether it be the client whom he is advising, or the Court or Jury whom he is endeavoring to persuade, he is bringing to bear the weight of his own opinion or argument to sway the

* This paper is the outgrowth of an informal talk given by the author to the students of the Law Department of the University of Pennsylvania and subsequently at the request of the Dean put into permanent form. It is not intended as an essay on the subject but was an attempt to make a few suggestions and formulate a few practical rules which would be of some assistance to law students when they entered upon their professional careers.

mental conclusions of others, and thus affect their actions. Preëminently, therefore, the character of the lawyer is of the highest importance. To win and maintain the confidence of clients, of courts or of juries, he must have a reputation for fairness, for truthfulness, for integrity. To keep his own judgment sound, he must have not merely the reputation, but the qualities themselves. It must be remembered that however far the rules of law may depart from justice in individual cases, they all rest upon an attempt to secure fair and honest dealing between individuals, and that to most minds the right appeals always more strongly than the wrong. No lawyer's intellectual judgment is safe if his ethical judgment is unsound.

Preparation for the practice of the law involves therefore not merely the storing of the mind with information, but the development of the individual character. To advise, to persuade, to direct, includes much more than the imparting of information. The address, the tact, the control of the temper, the accurate legal judgment, the accurate moral judgment, all are elements which enter into that influence over the minds of his fellow men in legal matters, which it is the business of the lawyer to exercise.

It may be said that there are six important branches of a lawyer's education, viz:

1. The storing of the mind with legal principles and legal decisions.
2. The ascertaining of where and how to look for the law in order to quickly obtain information.
3. The formation of a clear, accurate and concise style, both of oral speech and of written argument.
4. The control of his own temper and the dispassionate and critical observation of the mental qualities of his fellow men.
5. The training of his mind into the habit of rapid, clear and accurate thought.
6. The training of his conscience, so that it shall see clearly and decide correctly moral questions.

Of these, the last is by no means the least important,

for without it, even the most brilliant lawyer may make shipwreck of his career.

No code of ethics can be devised which can classify and solve the innumerable moral questions which beset a lawyer's path. If his ideals are true, however, there comes to him with time and experience an intuitive moral judgment, just as there comes to him an intuitive legal judgment.

The most that will be attempted in this lecture, is to call attention to certain principles and rules of conduct which may save the young and inexperienced lawyer from embarrassing slips while he is attaining that sure footing which experience alone can give.

If some of the rules may appear purely conventional, it is well to remember that even conventional rules usually have some reason for general acceptance. To paraphrase a familiar quotation, In law as in whist it is better to follow the rules of the game. Eccentricity often accompanies genius, but it is a defect rather than an embellishment, and almost invariably a drawback to success.

In this connection, it is well to remember that when in doubt about any question of legal ethics or professional etiquette it is a safe rule to consult some member of the Bar of high standing and ripe experience. No young lawyer need hesitate to ask for such advice from any member of the Bar either with or without a personal introduction. It is one of the pleasant features of the profession that in such emergencies, every lawyer is willing to freely give any younger or less experienced lawyer the benefit of his experience and judgment.

For convenience, the rules to which attention will now be called will be grouped under six heads, viz:

1. The lawyer himself.
2. His methods of obtaining business.
3. His relations to his client.
4. His relations to other members of the Bar.
5. His relations to the Court.
6. His duty to his profession.

THE LAWYER HIMSELF.

Cultivate correct personal habits, gentlemanly appearance and courteous manners.

The tool with which a lawyer works is his mind. The development and use of his intellect are of paramount importance. As factors of success, however, the care of his person and the cultivation of his manners, are scarcely less important. The most palatable food may be offensive if offered on an unclean dish, and the most beautiful flower lose its charm if it have an offensive odor. It is of little avail for a lawyer to cultivate his intellect and stock his mind with information if he neglects that care of his person and that courtesy of manner which are necessary to make his intercourse with his clients, his fellow members of the Bar, and the Courts agreeable. Avoid therefore all degrading personal habits, avoid all debauchery and excess, dress neatly and carefully and cultivate courtesy of manner at all times and under all circumstances. Like the oil which adds nothing to the power of the machine, but which is essential to its efficiency, these details will enable the lawyer to effectively use the powers of his intellect in the successful practice of his profession.

Keep the temper under control at all times and under all circumstances.

If there is one rule above another which should be repeated by a lawyer night and morning, it is that the temper must be kept in control. Clear mental vision and carefully guarded speech are absolutely essential in the intellectual contests and crises which are the daily portion of a lawyer's life, and to lose control of the temper is to lose both of these. The mind must be kept as finely tempered as a sword. It must bend but not break before adverse circumstances, unexpected attacks or unfair thrusts. Lowell has given a perfect ideal in this respect in his poem on Lincoln:

> "They could not choose but trust
> In that sure-footed mind's unfaltering skill
> And supple tempered will,
> That bent like perfect steel to spring again and thrust."

What a description is this of a perfect temper! A temper that bends before the blow, but retains its latent power to spring again when the sure-footed mind sees that the opportunity offers. Remember that a mind actuated by unrestrained passion is a broken sword, which has lost its power to bend and thrust and retains only the power to strike ineffective blows. Postpone, therefore, all indignation at injustice, at unfairness, at partiality, until the emergency shall have passed and in the meantime devote your unclouded mental powers to the single problem of how to meet the emergency by counter skill and diplomatic language.

Cultivate an intuitive moral judgment.

The lawyer is a mental athlete engaged constantly in intellectual contests. As in physical contests, when the struggle is once commenced, the desire to win becomes the one absorbing thought. Unless in such cases the mind is trained to instinctively avoid all unfair or dishonest means of winning, the temptation to win, fairly if possible, but at all events to win, becomes overmastering.

Exposed as he is to this peculiar temptation the lawyer must exercise constant vigilance to keep his moral instincts sound. It would be well if there were inscribed on the walls of every law school these words of Huxley's:

"Nothing can be worse in the way of a bar to an honorable career than the habit of winning unjustly. Let a man accept the principle that the chance failure of an arbiter to see through his tricks gives him the right to the gains they may afford him, and thenceforth the limits of honorable action will never be clear to him."

No worse fate can befall any lawyer than to have the limits of honorable action never clear to him.

METHODS OF OBTAINING BUSINESS; ADVERTISING.

Never solicit business by public advertisement.

This rule may seem purely conventional, but it is well recognized by the profession generally and is in accord with the practice of most other learned professions.

There is an exception to the rule in the case of what are termed professional cards inserted in legal directories and professional journals, and in some communities in the local newspapers. This practice although not considered unprofessional is limited to a very small number of lawyers, and the contents of these cards are limited to the name, the address, the courts in which the advertiser practices and his references. Any advertisement by a lawyer akin to the puffing of his wares by a merchant is frowned upon by the profession and would only excite distrust in the intelligent portion of the community.

SOLICITATION.

Never solicit business from strangers either personally or by means of agents or runners.

This rule is thoroughly well established and no lawyer can violate it without risking the loss of the respect of his professional brethren and the confidence of the most intelligent laymen. Like the rule against advertising, it may seem conventional, but it is founded upon sound principle. What a lawyer gives to his client is his personal skill, his personal integrity, his fidelity to the trust which the client necessarily reposes in him. These qualities cannot be judged by inspection as can the wares of the merchant or the productions of the artisan. The more reliable and trustworthy the lawyer, the less inclined would he be to vaunt to a stranger his ability and integrity. The more intelligent the stranger, the less would be the weight given to the lawyer's self praise. Only the least reputable of the members of the Bar would be willing to solicit. Only the most ignorant of the community would be influenced by it. The practice also necessarily leads to bids and counter bids for professional employment, to the stirring up of litigation and unseemly intrusion in time of trouble, and is in general both debasing to the profession and dangerous to the public.

LITERARY WORK.

The young lawyer should embrace every opportunity to do, either with or without compensation, such legal literary work as may help to make him known to his professional brethren.

Most lawyers in the opening years of their career have some leisure time. This cannot be better spent than by annotating important cases or writing articles for law periodicals or by assisting in the work of reporting cases or by competing for prize essays on legal subjects. The question of compensation is of little importance as compared with the publication of the name of the author in connection with the work. More than one prize essay has become an authority giving the author a standing in his profession, and it has not infrequently happened that by a series of articles on subjects connected with a particular branch of the law, the author has acquired a reputation for skill in that branch, which has proved the foundation of his career. No good literary work of this kind is ever wasted. If it does nothing else, it helps to improve the style and form the habit of clear, smooth and accurate diction so important for every lawyer. Usually, however, it also serves as an introduction of the author to the profession at large and makes his capacity and industry known.

INTERCOURSE WITH OTHER MEMBERS OF THE PROFESSION.

The young lawyer should join law associations, law clubs, and all legal societies which will increase his acquaintance with the other members of the Bar and identify him with the general interests of the profession.

Personal acquaintance with other members of the Bar and with the Judges and personal intercourse with them in relation to professional matters are of great advantage to a young lawyer. The best and most permanent professional success depends more upon the reputation inside the profession than upon the reputation with the outside public. Many a suc-

cessful lawyer has owed his first start on the road to success to the friendly offices of other members of the Bar or of Judges, and no opportunity should be lost of forming their acquaintance. Incidentally also the young lawyer in intercourse with other members of the profession obtains much useful information with regard to legal matters which he could never obtain from books.

INTERCOURSE WITH MEN OUTSIDE OF THE PROFESSION.

Use all opportunities for social intercourse with the best men within reach, and lose no opportunity to meet and know men of high character, large knowledge or active leadership in current affairs.

To be successful the lawyer must have clients. He cannot advertise for them as a merchant would advertise his goods. He can, however, make himself known year by year to a widening circle of acquaintances, and if he be of good habits and reasonably intelligent and is careful to seek always the better social intercourse and environment rather than the worse, he can be reasonably sure that he can win that slow but sure increase in practice which must almost invariably precede even the most brilliant professional success. By mixing with other men in social intercourse, he also reaps another advantage. His business is to advise, to persuade, to influence other men. To do so he must know human nature—its merits, and its defects, its prejudices, its passions, its idiosyncrasies. He must know the current forces which are influencing it, the events which are interesting it. The knowledge he obtains from books is one of the means by which he hopes to influence men, but it is of little avail if he does not understand men. The fisherman who has great variety of bait, or knowledge where to obtain it, must go back to camp hungry unless he knows the habits of the fish. The lawyer must of necessity cultivate the acquaintance of men and keep posted as to what they are doing in the world. Within reasonable limits, therefore, social intercourse with other men is not only a legitimate

means of advertisement, but it is an essential element in a lawyer's training.

PARTICIPATION IN POLITICS.

Take an active interest in political affairs.

Under our form of government the ultimate responsibility rests upon the citizens themselves. It is the duty of every citizen, not only to vote, but to do that without which voting is of little use, viz: to confer, to discuss, to suggest, to initiate. The lawyer, owing to the fact that his profession brings him into constant intercourse with men of diversified occupations and interests, is especially fitted to take part in political discussions, and participation in them is a valuable aid in extending his acquaintance, widening his experience and developing his powers of argument and influence. While, however, participation in politics may be both a duty and a benefit, it has special dangers against which the lawyer should be constantly on his guard. The maelstrom of politics has wrecked many a promising career. The excitement of political contests, the intoxication of political success have a tendency not only to withdraw the young lawyer temporarily from professional study and work but also to unfit him mentally for studious habits or careful and accurate professional work. There is always the danger also that to secure some temporary gain or some newspaper prominence, the lawyer may surrender his independence and agree to be the subservient instrument of some political organization, obeying blindly its orders and accepting gratefully its rewards. So long, however, as the lawyer holds his professional success to be his paramount ambition, so long as he refuses except as a matter of duty in some important crisis to accept any political work or office which interferes with his professional career, and so long as he refuses to surrender his integrity and independence, he may and often ought to take an interest in politics.

RELATIONS TO CLIENT.

A lawyer has no right to aid a criminal in escaping his just deserts or to aid any person in accomplishing a wrong or avoiding a just obligation.

A lawyer is under the same obligation to be an honest man as every other member of the community. He has no right to sell his services to aid rogues in their wrong doing or to aid them to escape from the consequences thereof.

When, therefore, a client accused of crime confesses his guilt to counsel the latter has no right to aid him to persuade either court or jury of his innocence or to delay or prevent by technical obstructions the trial of the case. So also where a client seeks aid in the accomplishment of a purpose which is avowedly violative of a written statute or which would be universally recognized as violative of good morals, it is the plain duty of a lawyer to refuse such aid.

In the case of an assignment of counsel to a prisoner by the Court, it is the duty of such counsel if the prisoner acknowledges his guilt and refuses to plead guilty, to continue to represent him and to see that no conviction is obtained except upon competent evidence and in accordance with the legal rights of the prisoner. It is for this purpose that counsel is assigned to the prisoner, and it is the duty of counsel to accept and act under such assignment, so that the administration of justice may be safeguarded by the observance of proper rules.

In the application of this rule also care must be taken to distinguish between a confession or absolute certainty of guilt and a mere belief in such guilt. It is not only the lawyer's right, but his duty to believe in the innocence of his client until the contrary is confessed or demonstrated. So also care must be taken to distinguish between those matters which are clearly illegal or which are generally recognized in the community as immoral and those actions as to the propriety of which there may be honest differences

of opinion. A lawyer who, because he had extreme views on the liquor question, would refuse to draw the title papers for property which the client intended to use as a saloon would justly be considered quixotic, as would also a lawyer who would refuse to draw a will because he suspected that the client's money had been accumulated by dishonest business methods.

In this, as in most cases involving ethical considerations an active conscience does not mean a morbid one. The question which every lawyer should ask himself in such cases is, Am I selling my services to accomplish what is expressly prohibited by statute or impliedly prohibited by the moral code generally recognized by the better elements of the community?

A lawyer has no right to continue to represent a client if in the course of a lawsuit it appear either from the confession of the client or from demonstration beyond the possibility of mistake that the client's contention is false or dishonest.

This rule is but a corollary of the preceding one. If a lawyer ought not to take a case which would make him an accomplice in wrong doing, he ought not to keep such a case simply because when he accepted it he was not aware of its character.

A lawyer has no right to win or allow his client to win by false evidence, deception or trick.

This is also a corollary of the first rule. The lawyer is not a paid accomplice of rogues and he cannot share in either their purposes or their methods without sharing their guilt.

It is the duty of a lawyer to believe his client's story as to facts even though such story should seem improbable and contradictory to the weight of evidence.

Deductions based upon probabilities or upon the observation and memory of human beings must of necessity be to

some extent uncertain. A lawyer finds that his judgment of character, his estimate of the truth or falsity of a story, his analysis of motives is often at fault, notwithstanding years of training and experience. It would be hard if an innocent man should be deprived of legal aid because appearances were against him or because his motives were suspected. So long, therefore, as a client avows his innocence, and his guilt is not absolutely demonstrated; so long as he does not ask aid in the performance of an act clearly illegal, or which by the consensus of opinion of honest men would be clearly immoral, he is entitled to the services of counsel, and it is the duty of the lawyer to disregard his own prejudices and even his own belief and act on the theory that his client's acts are innocent and his client's motives proper. There is perhaps a distinction to be drawn between the taking of a case and the continuance in one after it has once been undertaken. There is no legal obligation to accept every case that is offered, and a lawyer may be justified in refusing to take a case simply from distrust and suspicion, where he would not be justified on the same grounds in abandoning his client after the trust has once been assumed. It is obvious that the abandonment of a client during the progress of a lawsuit may involve him in much more serious risk and peril than the refusal to accept his case. Even with regard to the acceptance of cases in the first instance, the right of a lawyer to refuse is subject to some qualification. Lawyers, like physicians, are engaged in alleviating the troubles of mankind. Theoretically a physician may pick and choose his patients, and yet everyone would instinctively blame a physician who refused to aid a person suddenly injured or stricken with disease, and it is one of the unwritten laws of that most noble profession, that aid shall be freely given to the poor and needy. In the same way a lawyer should within reasonable limits hold himself ready to aid and succor those in distress who need legal services, and the better members of the profession have always recognized this obligation.

It is the duty of a lawyer to advocate his client's claim with regard to disputed questions of law irrespective of his own belief in its soundness.

The legal conclusion to be drawn from the application of a rule of law to any fresh complication of human affairs is usually a matter of judgment or opinion. On such questions, the lawyer's own judgment may be at fault. It frequently happens that the best lawyers lose cases they expected to gain and gain cases they expected to lose, and this not always because of an unexpected development of the facts, but because the Court took an unexpected view of the law. It not infrequently happens at the close of a case that a lawyer is convinced that his original opinion was wrong. It follows, therefore, that while a lawyer should always state to a client frankly and fully his opinion as to the legal points, especially if that opinion be adverse, and while he should explain fully the risks which the client runs, he ought not to refuse to take or argue the case merely because of his adverse opinion. It goes without saying that this does not involve the right to argue the case unfairly. He has no right to consciously deceive the Court as to the legal question involved or as to the authorities and precedents which he cites or to which his attention is called. He may, however, honorably present all the arguments in favor of a contention as to the correctness of which he is not satisfied, so long as he does so fairly and without deception.

It is the duty of a lawyer to fully advise his client of the risks of litigation and to encourage fair compromises.

One of the most important duties of the lawyer is to give to his client cool, dispassionate advice. The client's judgment is almost always warped by his desires, ambition, greed, a sense of injury, a desire for revenge. These and other motives cloud his vision. The lawyer must as far as possible remove or neutralize these disturbing elements and by pointing out the true factors which should determine the action to be taken, bring about a wise and con-

servative decision. In many, if not most, lawsuits both parties believe themselves to be right, and a fair and honorable compromise settlement is desirable. It is true that a compromise often brings less immediate pecuniary profit to the lawyer than would a contest, but in the end both the honors and the pecuniary rewards of the profession come to him who shows that duty, not avarice, controls his advice to his client. The duty to make a fair compromise, is possible, is universally recognized by the better elements of the profession and has been of inestimable value to the community. As has been wittily observed by Robert Grant:

> " The human race, from parsons down,
> Would always fighting be,
> If counsel loved not compromise
> Far better than a fee."

The communications of client to counsel are not to be divulged to others nor made use of either for the benefit of the counsel himself or of other parties.

All communications by clients are made in confidence that they will not be divulged or made use of. The lawyer holds the knowledge acquired from his client in the same way that he could hold his client's property. He has no right to divulge it to others. He has no right to speculate with it for his own profit. The importance of this rule and the reasons which underlie it are so well understood, that no warning against direct disclosures of clients' affairs is necessary. There are two matters, however, as to which a word of caution may not be amiss. Everyone has a natural pride in the possession of exclusive or early knowledge of facts and it is flattering to one's vanity to be able to impart this information to others. There is a constant temptation to a young or inexperienced lawyer to disclose or hint at interesting facts, which have come to his knowledge through communications from clients. Such disclosures are dangerous even when names are not used, and the tendency to such gossip must be jealously guarded against. It may often happen also that in the course of professional

consultation facts may be learned which may be made the basis of successful speculation in stocks or merchandise or real estate. No lawyer should avail himself of such opportunity without the consent and approbation of his client, and it is better not to avail himself of the opportunity in any event. Even if the personal speculation involves no disturbance to his client's plans, it impairs the lawyer's power to thereafter give impartial disinterested advice to his client in the matter, and is therefore to be avoided.

Give to clients not merely faithful service, but sympathy and encouragement in periods of distress or adversity.

While in one sense the relation of counsel and client is a business one founded on a pecuniary consideration, it involves so much personal trust and confidence that the lawyer is peculiarly fitted to relieve the mental distress and stimulate the failing courage of the client. Unfortunately much of the lawyer's work grows out of the quarrels, the failures, the misfortunes of his fellow men. In such cases it is quite as important for the lawyer as for the doctor to relieve as far as possible the mental distress as a preliminary to physical results, and independent of this no lawyer ought to neglect the opportunity which is thus specially given to him to be helpful and inspiring to those in distress. It is to the credit of the profession that as a rule its members have been willing, irrespective of any pecuniary profit to themselves, to give patient hearing to the recital of tales of distress and to aid by sympathy and encouragement, even more than by services, the client whose misfortune or whose fault has brought his affairs into disastrous or distressing complications.

A lawyer who either with or without a retainer has once undertaken to act for a client should not advise or act in relation to the matter for any other client whose interests are or may be adverse.

The utmost fidelity is due from the lawyer to the client. He cannot represent antagonistic clients in the same matter

and he ought not to put himself in any position where there is a possibility that he might owe inconsistent duties to two clients. Even after his relation to one client has been severed, he cannot act for another on the other side of the case, since the knowledge acquired from the first client might consciously or unconsciously be used for the benefit of the second. The relative importance of the clients has no bearing on the application of this rule. However important may be the second client, however strong his case, he must be sent to other counsel if the lawyer has undertaken to advise or assist the other side in the same matter.

It is unwise for a lawyer to have any business dealings with his client except those incident to his professional employment.

The relation between counsel and client being one of trust, and confidence, any business dealings between them not incident to the professional services rendered is looked upon with distrust and suspicion. The parties are not on an equal plane. They cannot deal at arm's length. Apart from this consideration, the judgment of the lawyer will be more unbiased, more independent, more accurate, if the professional relation is not complicated by other business relations.

It is unwise for a lawyer who is engaged in active practice to carry on or become identified with any business not connected with his profession, and especially is it unwise for him to engage in speculative pecuniary ventures.

The law is a jealous mistress. Men who expect to succeed in her service cannot give her a divided attention. No man whose mind is occupied with the state of the stock market or with the duties or hazards of another business can give to his professional work that unremitting and undistracted attention which is essential to success. Nor

are clients attracted to a lawyer who evidently has other aims and duties than the practice of his profession.

Clear accounts should be kept of all moneys belonging to a client. Where possible such moneys should be paid over to the client as received. Where for the client's purposes the money must remain temporarily in the lawyer's hands, it should be kept, if possible, in a separate account and at all events should not be drawn against, except for the client's business.

It goes without saying that the use by a lawyer of his client's money for his own purposes is theft, no matter how short is the use or how specious the pretext. Even where the intent to do wrong is absent, the same result may be accomplished by careless accounts or by delay in remitting collections. While it is not always necessary to keep elaborate books of account, there should always be kept such a record that all moneys received or expended for a client can be at once traced. Many lawyers keep all moneys received from clients in a separate bank account, so that there can be no possibility of confusion of such funds with their own moneys, and where such receipts are large the practice is to be commended. It is not always practicable to do this however, but it is practicable in all cases to see that clients' money is remitted at the earliest possible moment and that accurate account is kept with regard to it.

In ordinary matters and for solvent clients, a case should not be undertaken for a compensation contingent on success, and in no case should a lawyer agree to pay the costs out of his own pocket, and not to look to his client for re-imbursement.

While the courts are not wholly agreed as to what contracts for contingent fees are legal and what illegal, there is no doubt that such contracts are always looked upon with suspicion and are not enforced unless reasonable in their character. It may be said also that while it would be difficult to frame any rule as to the allowability of contingent

fees which would meet with universal approval among the members of the profession, it is undoubtedly true, that it is regarded as unprofessional and demoralizing for any lawyer to make a practice of taking his cases for contingent fees. There are, it is true, certain classes of cases in which the necessity of allowing contingent fees has made them customary. Such for example are claims against the Government (See Taylor vs. Bemiss, 110 U. S. 42). Even in such cases the custom has led to abuses, which make the courts regard the contracts with suspicion if not with disfavor. Exceptional cases will also arise in general practice in which the hardship of the case is such that the client is entitled to counsel and the client's poverty is such that contingent compensation is his only method of payment. Such cases, however, are exceptional and it is a safe rule to follow that ordinarily cases are not to be accepted for contingent compensation, and that there must be either a general custom as to a particular class of cases or an unusual combination of circumstances in the particular case to justify a departure from the rule. Any lawyer who habitually solicits or receives cases for contingent compensation impairs his professional standing and ultimately impairs his professional ability. The reason for this is not difficult to understand. Such a lawyer instead of doing professional work for a fair return becomes a gambler upon the uncertain chances of litigation. His judgment is necessarily impaired by his personal interest in the recovery, and the temptation to unfairness and chicanery is enormously increased. The practice is therefore justly frowned upon by the profession and should be carefully avoided. Usually, a lawyer should require his clients to pay the costs of a suit as they are incurred. In some exceptional cases where the client is poor, and the need of relief imperative, the costs may be advanced by the lawyer as a matter of charity. He ought never to agree, however, to pay the costs out of his own pocket except as a loan to an impecunious client. Otherwise he lays himself open to the imputation of encouraging strife and tempting persons to litigate for his benefit.

RELATION TO OTHER MEMBERS OF THE BAR.

Under ordinary circumstances do not undertake to advise or act for a client who already has consulted other counsel in the same matter, unless the latter certifies that the relation has ended or that he is willing to have new counsel associated with him.

This rule has two objects, viz: First, to prevent the embarrassment and confusion which would exist if different lawyers were advising a client or acting for him without consultation between them, and second to protect counsel against unreasonable dismissal from a case without payment for the services already rendered. Upon learning, therefore, that any other counsel has previously been consulted, the first duty of the lawyer is to communicate with such counsel or require a letter from him showing that his connection with the case has ceased, and that there is no reason why new counsel should not act. There may be exceptional cases in which the conduct of the first counsel is so unreasonable or so dishonest that the case may be undertaken notwithstanding that he has refused to accept a dismissal or that his charges have not been paid, but these cases are fortunately rare and the general rule is as has been stated.

Never have any communication with a party on the other side of a case who has counsel, nor make directly or indirectly any settlement or compromise with such party except through his counsel.

This is a rule of the greatest importance. Clients are entitled to the advice and assistance of their own counsel. If a lawyer representing antagonistic interests deal with the client in the absence of the latter's counsel he is taking an unfair advantage. It makes no difference in such cases that the client consents to act in the absence of his counsel. To obtain or accept his consent is as unfair as to obtain his agreement. Once engaged in a case the counsel is the constant defender and guardian of his client's interest. Both

courtesy and good morals require that the opposite counsel shall deal with him and with him alone. To do otherwise is in the highest degree unprofessional and unfair.

This rule covers not only direct dealings of counsel with the opposite party but any indirect attempt to conduct a negotiation in which one side shall obtain the benefit of counsel and the other shall not. There is no rule which prevents both parties from settling their own controversies without reference to their counsel, provided they pay the latter their reasonable charges, but where counsel learns that such negotiations are going on, he should not aid in them by preparing papers or making suggestions without communicating with the opposite counsel. In other words, counsel should never take part directly or indirectly in any negotiation between the parties without advising the opposite counsel. It often happens that in the early stages of a controversy one side alone has counsel. In such cases counsel should exercise extreme care not to mislead the other side as to legal rights. Whenever it appears that the party dealt with is in ignorance of his rights and is relying upon the statement of them by his opponent's counsel, he should be advised fully as to all his rights, or what is still better he should be advised to consult independent counsel before acting.

Never communicate with the Court or any Judge thereof in relation to a case, unless the opposite counsel is present or unless such communication is in writing and a copy is furnished cotemporaneously to such opposite counsel.

In the settlement of controversies before human tribunals by human agencies, suspicion of unfairness is so easily excited, and impartiality of judgment is so difficult to obtain, that extreme care should be taken to observe strictly the rules which are intended to insure fair play. Neither in formal interviews or in chance conversation with a Judge should counsel attempt to discuss a case if the opposite counsel is not present, and every communication sent to the Court should be sent also to the opposite counsel.

Do not take advantage of technical defaults occasioned by accidental oversights or neglect of the opposite counsel.

It frequently happens in actual practice that clients' interests are imperilled through some accidental omission of counsel. Counsel forget to file an affidavit of defence in time or fail to observe a case on the trial list. In such case the opposite counsel, if satisfied that it is an accidental default ought not to take advantage of it. There are two reasons for this. In the first place no honorable contestant will take advantage of an accidental misfortune which places his adversary temporarily at his mercy. The second reason is more selfish. No one is so careful, so accurate and so well served, that he may not occasionally through his own or his assistant's neglect or forgetfulness overlook some technical requirement of the law. In such cases he may have to present to his adversary that petition which Pope puts in his "Universal Prayer" to the Deity: "That mercy I to others show—that mercy show to me." The man who takes advantage of the accidental defaults or oversights of his adversaries sooner or later finds himself the victim, and receives no sympathy in his misfortune.

Do not interrupt the opposite counsel during his argument, but reserve your comments or criticism until he closes.

It is a rule of good breeding as well as of professional courtesy not to interrupt an opponent's speech. It is important also to the orderly administration of justice that argument should not degenerate into an unseemly war of words in which victory should go to the lawyer having the most powerful lungs or the most importunate manner. The temptation to interrupt an adversary is often very great, especially if he is making apparently unfair or inaccurate statements. In most cases, however, interruptions merely annoy counsel and confuse the Court, and are not nearly as effective as the calm reply made at the close.

There is one exception to the rule against interruption. When the opposite counsel is making the closing speech of

the cause and is apparently misstating the evidence, permission may be asked of the Court to interrupt the counsel and have the misstatement corrected. In such cases, however, the interrupting counsel should always address himself to the Court, not to the opposite counsel.

Fight with all the force and skill possible, but fight fairly and not by tricks and deceit.

This does not mean that no attention is to be given to strategy. In legal contests, as in physical warfare, strategy is of the greatest importance. A case should be carefully studied with the view to presenting it in such a manner as to give most effect to its strong points, and least effect to its weak ones. The issue on which the case is to be fought, the method of attack and defence, the order of evidence, etc., are all matters in which skill is quite as necessary as in presenting the legal principles. Strategy, however, does not mean trickery. To feign sickness in order to procure a continuance, to scheme to have friends or confederates called on the jury, to induce witnesses to stay away, to make offers of clearly incompetent evidence, in order that the jury may be influenced by the offer or to make side remarks which can be heard by the jury, all these are tricks which are as unprofessional as they are immoral. It must always be remembered that the profession of the law is an honorable profession, and the service which the lawyer undertakes to perform is honorable service by honorable methods. Well was it said by Lord Chief Justice Cockburn that—

"The weapon of the advocate is the sword of a soldier, not the dagger of an assassin."

Never under any circumstances indulge in personal criticism or abuse of the opposite counsel.

"No quarrels have we of our own,
We manage others' broils,
And though we fight with all our might
We've buttons on our foils."

Statements or tactics of counsel often seem to his adversary inaccurate or unfair to such an extent as to imply an intention to be unjust. In most cases the inaccuracy or unfairness is merely the unconscious bias which almost inevitably exists in the minds of counsel, and in any event whether the injustice is intentional or not, the real issue before the court is the merit of the case, not the misconduct or character of the counsel presenting it. To abuse or criticise counsel shows a loss of temper which destroys confidence in the judgment, and it provokes reprisals which interrupt and interfere with the consideration of the case. Counsel should as far as possible train themselves to listen calmly to any statements and to witness any conduct on the part of their adversaries without betraying annoyance or indignation. If a statement can be controverted or a trick circumvented, the exposure will be more speedy and effective if done coolly, deliberately and without personal abuse, than if done in the heat and excitement of passion. If the statement cannot be controverted or the trick circumvented, mere personal denunciation will not bring conviction, and is apt to do more injury to the accuser than to the accused.

Treat every member of the Bar with courtesy and outward respect, and beware of the habit of uncharitableness in criticism.

Until a lawyer is disbarred or suspended he is an officer of the Court, and the member of an honorable profession. He should in all business relations be treated with the respect due to his position. No personal differences justify one counsel in refusing to speak to or recognize another in legal matters in which they may come in contact or to treat another in such matters with disrespect. It is wise also to acquire the habit of giving a charitable rather than an uncharitable construction to the conduct of fellow members of the bar, and to make allowance for the bias, prejudice and excitement which the zeal for their clients have a tendency to produce. Good nature and charity smooth the rugged and

difficult pathway of litigation, and in the end are most likely to lead to a just estimate of human action.

RELATION TO COURT.

Be accurate in every statement to the Court whether it relate to the facts proven or the authorities cited.

The lawyer is an officer of the Court. He expects from the Court impartial hearing of each side and careful consideration of every fact and principle bearing on each. It is his duty to aid the Court in its examination by clearly pointing out the actual issues involved, the facts proved and the law applicable. If he is inaccurate or careless in his statement of fact or law, he adds to the labor of the Court. In addition to this he usually endangers his client's cause. Since the Court must base its ultimate conclusion upon the facts actually proved, and the law actually decided, any advocate who presents an inaccurate statement of either as a basis for the conclusion he urges upon the Court, runs the risk of having his superstructure rejected with his foundation, while the advocate whose statement of facts and law is just and accurate finds the Court predisposed to adopt also his conclusion.

Be candid in all statements made to the Court.

This is but a corollary of the previous rule. To refer to a statute without calling the attention of the Court to subsequent legislation which modifies it; to cite a case which has been overruled; to quote a portion of an opinion without the qualifying context or to read extracts from testimony which mislead, unless read in connection with other statements of the same witness, is not only to fail in the duty which the lawyer owes the Court, but also in the end to destroy the confidence of the Court in his statements. This rule of course does not require where the law or the facts are in dispute that counsel must state to the Court the authorities or the evidence which support the opposite side of the case. An authority or statute or testimony in the cause which so conclusively settles the issue that there can be no possi-

bility of dispute ought if known to counsel on either side to be disclosed to the Court, but in cases which admit of a fair dispute, counsel, so long as he does not mislead the Court and does not unfairly quote cases or testimony, may confine himself to such as support his own case and need not disclose or state the cases or evidence which may operate against him. In practice, however, it is often good tactics, especially with regard to antagonistic evidence to quote and explain or distinguish it, thus minimizing its effect when it is read, as it is almost sure to be by the opposite side or by the Court.

While in Court always show by dress, conduct and language a respect for the dignity of the tribunal, and an appreciation of the gravity and importance of its functions.

The usefulness of Courts as arbiters in human disputes depends largely upon the respect in which they are held in the community. It is the duty of a lawyer as an officer of the Court to encourage and maintain this respect. He should therefore use the most punctilious courtesy when he addresses the Court, and by his dress and conduct show the most punctilious respect for its dignity. Showy dress or unusual or undignified costume should be avoided. He should always rise when addressing the Court, whether he be making a formal speech or answering a question, or making an objection. His overcoat as well as his hat should be removed and laid aside before he approaches the bar of the Court and invariably before he speaks to the Court. He should never interrupt the Court in the middle of a sentence nor intimate that the Court is partial or unjust. Mistakes or misapprehensions on the part of the Court should be called to its attention with courtesy and deference. That the bar has its rights is true; that these are quite as important as the rights of the Court is equally true, but the character of the work in which both are engaged renders it of the greatest importance that the dignity of the tribunal shall be maintained and that all the forms of courtesy should be rigorously observed.

Never publicly criticise an adverse decision of the Court.

Human nature is so constituted that few of us can fairly judge or impartially consider a decision in a case in which our sympathies or our efforts have been enlisted in favor of one of the contestants. Once we have thoroughly convinced ourselves of the justice of a cause it seems impossible that any other result can be reached, except through incompetence, carelessness or venality. To conquer this feeling and to accept decisions as necessarily the result of a fair impartial consideration is one of the most difficult as well as one of the most important requisites of a lawyer's training. Take defeats philosophically. Be humbled but not disheartened by them, and recognize the fact that all decisions of human tribunals are of necessity uncertain and that it is this very fact which, if it often causes your defeat, also gives occasion for the exercise of those talents on which you rely to bring you fame and fortune.

If obliged to become a witness in a case to a material fact do not take part either in the cross examination of counter witnesses or in the argument of the case.

It is not often that a lawyer is himself a witness to material and disputed facts in a case in which he is counsel. It sometimes happens, however, that he has such personal knowledge of material facts that it is important for the interests of his client that he should take the witness stand. When this is known before the trial other counsel should be called in to conduct the examination of witnesses and argue the case. When the necessity for taking the witness stand develops during the trial and the counsel has no colleague he should ask the Court to withdraw a juror and continue the cause. It is considered unseemly and indecorous for a lawyer to be both the witness to establish the fact and the advocate to comment upon his own testimony, at variance therewith. This of course does not apply to cases where counsel is called as a witness simply to make formal proof of facts either immaterial in themselves or not the subject of contention.

Never attempt to discuss a pending cause with a Judge of the Court, except at the bar of the Court, nor to bring any other influence to bear than the public argument of the case.

The task of a Judge is in many respects much more difficult than that of the lawyer. Not only must he carefully consider and weigh the evidence and arguments, but he must keep his mind free from all considerations of friendship, of prejudice, of policy or of profit which might disturb the even balance of the scales. It is the duty of counsel to refrain from any act which may embarrass the Court in the performance of its duty or bring suspicion upon its work.

This rule is not confined to counsel actually engaged in the case. Public criticism or argument upon the legal or moral aspects of a case under consideration by a court should be avoided until the court has rendered its decision.

DUTY TO THE PROFESSION.

Aid in the intellectual and moral development of the science and practice of the law.

It is a trite saying that "every lawyer owes a debt to his profession." Being a trained expert in the application of a science which develops with the intellectual and moral progress of his race it is his duty to leave that science the better not the worse for his career. Every lawyer, therefore, should take an interest in those matters which relate to the general science of the law and the interests of the profession as a body. Become members of law associations, attend their meetings, read the literature of the profession, keep informed of the progress of the law in other localities, co-operate in movements for proper reforms, and above all remember that "not failure but low aim is crime" and that there is one contribution which every lawyer may make to his profession. He may so practice it as to elevate its standard of morals and increase the respect and confidence of the community in its fidelity to the trust reposed in it. Such a

lawyer will merit that quaint and comprehensive eulogy penned by Ben Jonson—

> "Then com'st thou off with victory and palm,
> Thy hearers nectar and thy clients balm,
> The Court's just honor and thy Judge's love,
> And (which doth all achievements get above)
> Thy sincere practice breeds not thee a fame,
> Alone, but all thy rank a reverend name."

FRANK P. PRICHARD.